VICTIM AND WITNESS ASSISTANCE PROGRAM

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VWAP Overview

Sources of Authority

- 42 USC § 10601 et seq.
- 18 USC §§ 1512-1514
- DODD 1030.1
- DODI 1030.2
- SecNavInst 5800.11A
- Chapter 6, LEGADMINMAN

History of Victim Rights

- 1965 – CA provides first crime victim compensation fund
- 1980 – WI enacts first Victim Rights
- 1982 – Federal Law brings “fair treatment standards” to Victims and Witnesses
- 1990 – Victim Rights and Restitution Act incorporates “Bill of Rights”

Definitions

- *Victim*: A *person* who has suffered *direct* physical, emotional, or pecuniary harm as a result of the commission of a crime committed in violation of the UCMJ, or in violation of the law of another jurisdiction if *any portion* of the investigation is conducted *primarily* by the DoD Components, including…

Victims

- Military members and their family members.
- When stationed outside the continental United States, DoD civilian employees and contractors, and their family members. This applies to services not available to DoD civilian employees and contractors, and their family members, in stateside locations, such as medical care in military medical facilities.

Victims

- When a victim is under 18 years of age, incompetent, incapacitated, or deceased, the term includes *one* of the following (in order of precedence): a spouse, legal guardian, parent, child, sibling, another family member, or another person designated by the court or the Component Responsible Official, or designee.

Victims

For an institutional entity: an authorized representative of the entity. Federal Departments and State and local agencies, as entities, are not eligible for services available to individual victims.

Witness

A person who has information or evidence about a crime, and provides that knowledge to a DoD Component about an offense in the investigative jurisdiction of a DoD Component. When the witness is a minor, that term includes a family member or legal guardian. The term does not include a defense witness or an individual involved in the crime as a perpetrator or accomplice.

DoD Policy

- The necessary role of crime victims and witnesses in the criminal justice process should be *enhanced and protected*
- DoD Components *shall* do all that is possible within limits of available resources to assist victims and witnesses of crime without infringing upon the constitutional rights of an accused.

DoD Policy

Particular attention should be paid to victims of serious, violent crime, including child abuse, domestic violence, and sexual misconduct.

Victim's Rights Under VRRA

- Treated with fairness and respect for the victim's dignity and privacy
- Reasonably protected from accused
- Notified of court proceedings
- Attend public court sessions
  - Unless judge determines testimony would be materially affected if they hear other testimony

Victim's Rights Under VRRA

- Victims have *statutorily designated* advisory role in decisions involving prosecutorial discretion (e.g. plea bargains), however, . . .
  - Victim's views DO NOT supersede decision-maker's authority
- Right to available restitution*
- To be informed about conviction, sentencing, imprisonment, parole eligibility & release
- But….no cause of action

GOAL

- Identify and assist victims and witnesses of crime through the criminal justice process
  - Beginning with the initial report of a crime
  - Continuing through the investigation, prosecution, sentencing, confinement, and release of the offender. (Para. 6005, LEGADMINMAN)

USMC VWAP

- SJA to CMC is the Component Responsible Official
  - USMC VWAP regulation is contained in LEGADMINMAN

VWAP Multidisciplinary Approach

- Participants:
  - Installation commanders (and their rep)
  - Unit commanders (and their rep)
  - Law enforcement/criminal investigators
  - Legal
  - Service providers (FSC, counselors, victim advocates, health care personnel, chaplains, legal assistance attorneys)
  - Corrections

VWAP-Specific Duties

- Installation Commander = Local Responsible Official (LRO)
  - must appoint in writing a Victim Witness Liaison Officer (VWLO) who chairs a local VWAP council
  - must appoint in writing investigative and law enforcement VWLO
  - VWLO duties found at para. 6010, LEGADMINMAN

VWAP-Specific Duties

- Unit Commanders
  - Responsible for understanding and aggressively supporting VWAP
  - Ensure compliance with VWAP
  - Appoint in writing a Victim and Witness Assistance Coordinator (VWAC)
  - VWAC duties found at para. 6011, LEGADMINMAN
  - *Report all sexual assaults to PMO/SJA

VWAP-Specific Duties

- Law Enforcement
  - Receive VWAP training
  - Provide DD Form 2701
  - Conduct threat assessment and take reasonable measures to prevent re-victimization (NO PROMISES)
  - Assist victims with contacting service providers when appropriate
  - Maintain directory of VWACs

Law Enforcement

- Initial info & services - DD FORM 2701
  - Initial contact
  - Provide victim w/names/#s of investigator, VWAC, JA POC, state crime victim compensation office
  - Provide info re rights, med care, counseling or temp shelters, possible state/local restitution or relief, transitional compensation

VWAC Notification

- Investigator must notify VWAC
  - Both accused and victim military – provide ID of victim to both VWACs
  - Only accused is military – provide ID of victim to accused's VWAC
  - Only victim is military – provide ID to victim's VWAC

VWAP-Specific Duties

- Legal
  - OIC, LSSS or SJA of Joint Law Center must ensure trial counsel meet their responsibilities under VWAP
    - Shall also appoint in writing a representative to participate in local VWAP council meetings

Trial Counsel Responsibilities

- Info/services during investigation and prosecution--DD FORM 2702
  - Status of investigation
  - Arrest/Apprehension of alleged offender
  - Filing of charges (preferral)
  - Scheduling of each court proceeding
  - Release or detention status of an offender or alleged offender
  - Acceptance of a guilty plea or rendering of a verdict after trial; and
  - Opportunity to submit sentencing statement

Important Victim Role

- Victim's views concerning Pretrial Agreements
  - statutorily designated advisory role
  - TC must ensure victims know of their right to act in advisory role
  - TC must ensure views of victim are made known to convening authority

Trial Counsel Responsibilities

- Post trial info/services
  - DD FORM 2703
  - Discuss post-trial process with V/W
    - Location of confinement facility, clemency/parole considerations, CA action, notification rights
  - Notification of right to request written notification of changes in inmate's status (via the DD FORM 2704)
    - Transfer to another facility, parole, escape, release, or death

Trial Counsel Responsibilities

- V/W certification and election concerning inmate status - DD FORM 2704
  - DD FORM 2704 must be completed for every case involving confinement
  - If there are no eligible V/Ws entitled to notification, TC signs/certifies in Sec II
  - Send 2704 to confinement facility in all cases where member is confined

VWAP Responsibilities

- V/W certification and election concerning inmate status - DD FORM 2704
  - If there are eligible V/Ws, TC certifies in Sec III that they were notified re:
  - Status of inmate (sentence, earliest release, etc.) and possibility of clemency & parole
  - Right to prior notification of inmate's parole hearings, release, escape, death
  - Need to provide required info in Sec IV

REPORTING

- VWLO must provide DD Form 2706 NLT 1 Feb each year
  - statistical report for preceding year
- NCIS/PMO, VWLO, OIC LSSS/SJA Joint Law Center, Corrections, all have reporting responsibilities
- CMC(JAM) submits consolidated report NLT 15 Mar to ASN(M&RA)

Sources of Compensation

- Transitional Compensation – spouse/children
- Foreign Claims Act
- Article 58b, UCMJ - family
- Article 57a, UCMJ - family
- Article 139, UCMJ – property damage
- Restitution - R.C.M. 705(c)(2)(C)
- Federal, State, and local agencies

VWAP Resources

- DOJ - Office for Victims of Crime: http://www.Ojp.Usdoj.Gov/ovc
- DOD Web-site http://www.dod.mil/vwac
- SJA to CMC VWAP website: http://sja.hqmc.usmc.mil/jam/vwap/vwap.htm
- National Center for Victims of Crime: http://www.ncvc.org

More Resources

- Victim Assistance On-line: www.vaonline.org
- International Victimology Website: www.victimology.nl
- National Association of Crime Victim Compensation Boards: http://www.NACVCB.org

Items of Interest

- SecNavInst 1752.4, Sexual Assault Prevention and Response
- Deployed units
- DoD Task Force on Rape and Sexual Assault
- Draft MCO 1752.5, Sexual Assault Prevention and Response

Closing Comments

1. Don’t make promises
2. When in doubt contact VWLO or SJA
3. Status of victim/witness does not equate to special authority to receive documents about offender (see #2 above)
4. Use available resources – don’t be a counselor or victim advocate
5. Use DoD VWAP Council website

QUESTIONS?????